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6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF NEVADA**  
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9 DEREK A. COSTANTINO,

10 Petitioner,

11 vs.

12 RENEE BAKER, et al.,

13 Respondents.  
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Case No. 3:15-cv-00570-RCJ-VPC

**ORDER**

15 Petitioner has submitted an application to proceed in forma pauperis (#1) and a petition for a  
16 writ of habeas corpus pursuant to 28 U.S.C. § 2254. The court finds that petitioner is unable to pay  
17 the filing fee.

18 Petitioner also has submitted a motion for appointment of counsel. Whenever the court  
19 determines that the interests of justice so require, counsel may be appointed to any financially eligible  
20 person who is seeking habeas corpus relief. 18 U.S.C. § 3006A(a)(2)(B). “[T]he district court must  
21 evaluate the likelihood of success on the merits as well as the ability of the petitioner to articulate his  
22 claims pro se in light of the complexity of the legal issues involved.” Weygandt v. Look, 718 F.2d  
23 952 (9th Cir. 1983). There is no constitutional right to counsel in federal habeas proceedings.  
24 McCleskey v. Zant, 499 U.S. 467, 495 (1991). The factors to consider are not separate from the  
25 underlying claims, but are intrinsically enmeshed with them. Weygandt, 718 F.2d at 954. The court  
26 concludes that appointment of counsel is not warranted.

27 IT IS THEREFORE ORDERED that the application to proceed in forma pauperis (#1) is  
28 **GRANTED**. Petitioner need not pay the filing fee of five dollars (\$5.00).

1 IT IS FURTHER ORDERED that the clerk of the court shall file the petition for a writ of  
2 habeas corpus pursuant to 28 U.S.C. § 2254 and the motion for appointment of counsel.

3 IT IS FURTHER ORDERED that the clerk shall add Adam Paul Laxalt, Attorney General  
4 for the State of Nevada, as counsel for respondents.

5 IT IS FURTHER ORDERED that the clerk shall electronically serve upon respondents a  
6 copy of the petition and this order. In addition, the clerk shall return to petitioner a copy of the  
7 petition.

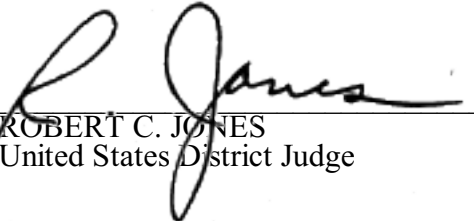
8 IT IS FURTHER ORDERED that respondents shall have forty-five (45) days from the date  
9 on which the petition was served to answer or otherwise respond to the petition. Respondents shall  
10 raise all potential affirmative defenses in the initial responsive pleading, including untimeliness, lack  
11 of exhaustion, and procedural default. Successive motions to dismiss will not be entertained. If  
12 respondents file and serve an answer, then they shall comply with Rule 5 of the Rules Governing  
13 Section 2254 Cases in the United States District Courts, and then petitioner shall have forty-five (45)  
14 days from the date on which the answer is served to file a reply. If respondents file a motion, then  
15 the briefing schedule of Local Rule LR 7-2 shall apply.

16 IT IS FURTHER ORDERED that any exhibits filed by the parties shall be filed with a  
17 separate index of exhibits identifying the exhibits by number or letter. The CM/ECF attachments that  
18 are filed further shall be identified by the number or numbers (or letter or letters) of the exhibits in  
19 the attachment. The hard copy of any additional state court record exhibits shall be forwarded—for  
20 this case—to the staff attorneys in Las Vegas.

21 IT IS FURTHER ORDERED that henceforth, petitioner shall serve upon respondents or, if  
22 appearance has been entered by counsel, upon the attorney(s), a copy of every pleading, motion or  
23 other document submitted for consideration by the court. Petitioner shall include with the original  
24 paper submitted for filing a certificate stating the date that a true and correct copy of the document  
25 was mailed to the respondents or counsel for the respondents. The court may disregard any paper  
26 received by a district judge or magistrate judge that has not been filed with the clerk, and any paper  
27 received by a district judge, magistrate judge, or the clerk that fails to include a certificate of service.  
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1 IT IS FURTHER ORDERED that petitioner's motion for appointment of counsel is  
2 **DENIED.**

3 DATED: This 21<sup>st</sup> day of April, 2016.

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6 ROBERT C. JONES  
United States District Judge  
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